

From: [Chang, Lisa](#)
To: [Fournier, Tony](#)
Cc: [Bonifaci, Angela](#)
Subject: RE: Question about authority to intervene on LO subaward funding decision
Date: Wednesday, June 10, 2015 9:06:00 AM
Importance: High

Hi Tony,

Thanks for checking on this, and we would really appreciate if you could look into this more later this week. We postponed our conversation with NWIFC and its subawardee, the Swinomish Tribe, until we've lined up what policy/regulatory support we do have.

We'd really appreciate your further researching this as well as possibly participating in a call with NWIFC once we've completed our internal research.

In the meantime, I'll put together internal discussion points about the activities we feel, from a programmatic perspective, are not acceptable. I will base my discussion points on what I understand from your note to be what we have to work with in terms of policy at this point. That is, we have EPA's "Substantial Involvement" T&C (#5 below, copied from the original award to NWIFC). Second, we have the "Subawards" T&C (#16 below, again, copied from the original award), as well as the Agency subaward policy that it cites (<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>). And finally, we have NWIFC's RFP language (the RFP it uses to solicit proposals for subawards), which describes the goals of the funding and eligible subaward activities.

Anything else you are able to find would be much appreciated. I will run my discussion points by you and Angela later this week.

Lisa

5. EPA's Substantial Involvement

EPA will be substantially involved in this project by participating in the following activities: (1) Within the first nine months of the project, EPA reserves the right to negotiate work plan and budget; (2) monitor the project management and execution throughout the assistance agreement's project and budget period; (3) provide technical assistance and coordination as requested or needed by the recipient; and (4) review and approve technical deliverables.

16. Subawards

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;

- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

From: Fournier, Tony

Sent: Wednesday, June 10, 2015 7:59 AM

To: Chang, Lisa

Cc: Bonifaci, Angela

Subject: RE: Question about authority to intervene on LO subaward funding decision

Sorry, Lisa, but I have not been able to find anything that gives us clear authority to dictate how they select the sub-awardees. The new policy that's in draft may give us more room, however, from the perspective of objectives/tasks in their subaward proposals, I think you have some level of discretion to address work that does not meet the criteria of the program. You may have to beef up the substantial involvement T&C in your agreement to better define a review process for proposals.

I suggest you refer to the current subaward policy for guidance until we can do more research. Sorry! No silver bullet that I can provide at present.

I should have more time later in the week to look more closely at the options.

Tony Fournier

Acting Manager

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From: Chang, Lisa

Sent: Monday, June 08, 2015 6:05 PM

To: Fournier, Tony

Subject: FW: Question about authority to intervene on LO subaward funding decision

Importance: High

Hi Tony,

Just checking in on this question – we will be meeting with NWIFC and its subawardee on Wednesday morning at 8:30 am and would love to have some backup information on our authority to intervene. NWIFC has given us a heads up that the subawardee is very curious as to what specific authority EPA has to intervene.

Thanks so much – (b) (6)

Lisa

From: Chang, Lisa

Sent: Tuesday, June 02, 2015 11:12 AM

To: Fournier, Tony

Cc: Opalski, Dan; Downs, Yvette; Bonifaci, Angela; Bonifacino, Gina

Subject: Question about authority to intervene on LO subaward funding decision

Importance: High

Hi Tony,

To follow up on our hallway discussion when I bumped into you up here a few minutes ago, we'd like to know what our authority is to intervene on an LO funding decision. Here is the situation:

- Under its cooperative agreement with us, the NWIFC LO annually requests proposals from Puget Sound tribes and tribal consortia for projects to protect and restore Puget Sound.
- In 2014, as in other years, NWIFC issued its annual RFP, which includes the following statement of purpose (my emphasis):

"The purpose is to provide sub-awards to 19 Federally-recognized Indian Tribes located within the greater Puget Sound Basin, and any authorized consortium of these eligible Tribes, to implement projects that are of high Tribal priority and that are identified in or consistent with the Action Agenda, such as activities in existing recovery plans, which will contribute directly to the restoration and protection of Puget Sound. Types of activities to be funded under the subaward process set up under this Cooperative Agreement can encompass any work for which there is a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts..."
- The Swinomish Tribe has submitted a proposal for funding under this 2014 RFP; this project is the continuation of a project that has been funded for the past several years under the NWIFC LO program. Briefly, the purpose of the project is to "first collect information on public perceptions of water quality in the Skagit Basin, and then to conduct a public education effort that would lead to improved practices and regulatory certainty that instream resources would be protected, consistent with the Skagit Chinook Recovery Plan."
- We have reviewed and commented on the project in previous years. We have expressed concern with other aspects of the proposal in the past, but the subawardee has addressed

the concerns and the project has proceeded.

- However, with the proposal for 2014 funds, in conjunction with reviewing some of the products produced in earlier years of the award, EPA staff now believe that the proposed work does not meet the stated purpose of the RFP and may even undermine it. Specifically, we believe that the project as actually implemented is not “consistent with the Action Agenda” and can no longer demonstrate “a strong, well-documented and supported need within the framework of Puget Sound protection and restoration efforts.”
- **Our question to you is this: what is EPA’s authority to direct the NWIFC LO not to fund this proposal, or to require significant changes to the proposal, or to terminate the project, in light of the direction this project has taken?**

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Many thanks for any regulatory or policy citations you can point us to,

Lisa

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